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For Troubled Youth--Help, Not Jail

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> "[T]here's the King's Messenger. He's in prison now, being punished; and the trial doesn't even begin till next Wednesday; and of course the crime comes last of all."
>
> "Suppose he never commits the crime?" said Alice.
>
> "That would be all the better, wouldn't it?" the Queen said.[1]

Like the punishment given the King's Messenger, our juvenile courts punish troubled youngsters who have committed no crime: the incorrigibles, the ungovernables, the truants, the runaways. The juvenile courts maintain broad grounds of jurisdiction allowing judicial intervention into matters of antisocial, but noncriminal, conduct on the assumption that with a court's guidance and treatment an erring child can grow to be a productive and useful citizen. Little evidence exists, however, to indicate that children have benefited from this juvenile court intervention.[2]

This Note examines juvenile court jurisdiction over noncriminal behavior. An overview of the history and philosophy of the juvenile court system provides a foundation for a discussion of both the problems attendant to the court's jurisdiction over these "status offenders" and the trend toward elimination of this jurisdiction. The Note sets forth alternative methods of dealing with noncriminal youth and concludes that states should act now to substitute voluntary social services and mediation for the responsibility that presently rests with the juvenile justice system. The primary focus of the Note is on California law as an example of what can be done in the future to make nationwide changes in the laws governing juveniles.

History and Philosophy

An analysis of the history and philosophy of the juvenile court system is important to a full understanding of the jurisdiction of the

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1. L. CARROLL, THROUGH THE LOOKING GLASS 177 (New American Library 1960).

2. CALIFORNIA INTERIM COMMITTEE ON CRIMINAL PROCEDURE, JUVENILE COURT PROCESSES, REPORT, 1970 Interim Session 7 (1971) [hereinafter cited as ASSEMBLY REPORT]; PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 7 (1967) [hereinafter cited as TASK FORCE REPORT].

courts over noncriminal youth and the increasing attack upon that jurisdiction.

Parens Patriae

The origins of the juvenile court system can be traced to the feudal days of England when the crown, through an inquisition or inquest after death,[3] supervised the estates of surviving minors. The theory by which the courts of chancery asserted guardianship over these minors was termed *parens patriae*.[4] The doctrine of *parens patriae* allowed the state to act *in loco parentis*[5] for all minors requiring its care and protection. This concept, that the state is the ultimate parent of all dependents within its borders, underlies the philosophy of our juvenile court system.

The courts' exercise of jurisdiction had become extremely broad by the mid-seventeenth century, assuming guardianship over minors to protect them from personal injury and loss of property.[6] The courts provided for the care, protection, discipline, and reform of minors who required such supervision. This equity jurisdiction over minors, by then an integral part of the English system of government, passed to the United States upon the establishment of courts of law and equity in the American states.[7]

3. This was known as the *inquisitio post mortem*. When a tenant died seised of property with an infant heir, wardship was provided by the King to acquire the benefits of tenure and livery. *See In re* Daedler, 194 Cal. 320, 324, 228 P. 467, 469 (1924).

4. *Parens patriae* literally means parent or father of the country. "In England, the King. In the United States, the state as sovereign—referring to the sovereign power of a guardianship over persons under disability." BLACK'S LAW DICTIONARY 1269 (4th ed. rev. 1968). The term *parens patriae* was used to explain the investiture of the court with jurisdiction over the person and estates of minors in Eyre v. Shaftsbury, 24 Eng. Rep. 659, 2 P. Wms. 103 (1722). For a study of the history of *parens patriae* as it relates to the juvenile court system, see Rendleman, *Parens Patriae: From Chancery to the Juvenile Court*, 23 S.C.L. REV. 205 (1971).

5. This doctrine became an integral part of the juvenile proceeding in the United States beginning with *Ex parte* Crouse, 4 Whart. 9 (Pa. Sup. Ct. 1839).

6. *See generally* Cowls v. Cowls, 8 Ill. 393 (3 Gilm. 435) (1846). In *Cowls*, the court stated: "The power of the court of chancery to interfere with and control, not only the estates but the persons and custody of all minors within the limits of its jurisdiction, is of very ancient origin, and cannot now be questioned. This is a power which must necessarily exist somewhere in every well-regulated society, and more especially in a republican government. . . . A jurisdiction thus extensive, and liable as we have seen, to enter into the domestic relations of every family in the community, is necessarily of a very delicate, and often of a very embarrassing nature; and yet its exercise is indispensable in every well-governed society; It is indispensably necessary to protect the persons and preserve the property of those who are unable to protect and take care of themselves." *Id.* at 395-96 (3 Gilm. at 437).

7. *In re* Daedler, 194 Cal. 320, 325, 228 P. 467, 469 (1924).

The Reform Movement

The present juvenile court concept developed further amidst the social revolution of the nineteenth century. Industrialism and immigration brought thousands of people to cities, resulting in overcrowding, increased crime, and the disruption of family life. Truancy and delinquency rose rapidly. Civic-minded men and women became concerned about the effect that the city, street life, and exposure to tobacco, alcohol, and pornography had upon children.[8] An additional concern was the brutalization of youth by the criminal justice process.[9] In response to these problems, social and legal changes were sought by early reformers, known as "child savers,"[10] who believed children were to be cared for, educated, and protected.[11]

The first major reform was the opening of the New York House of Refuge in 1825[12] by Quaker reformers.[13] The House of Refuge offered food, shelter, and education to the homeless and destitute of New York and, for the first time, removed juvenile offenders from the prison company of adults. This intervention into the lives of children and the specialized treatment afforded juvenile offenders was an effort to prevent predelinquent youths[14] from becoming criminals.[15] These reformers

8. TASK FORCE REPORT, *supra* note 2, at 2.

9. *Id. See, e.g.*, S. GLUECK & E. GLUECK, 1000 JUVENILE DELINQUENTS: THEIR TREATMENT BY COURT AND CLINIC (2d ed. 1965); Article, *Persons in Need of Supervision*, THE NEW YORKER, August 14, 1978, at 55.

10. A. PLATT, THE CHILD SAVERS (1969). The child savers included people such as Jane Addams, Enoch C. Wines, William Letchworth, Charles H. Cooley, and Louise de Koven Bowen.

11. Underlying the reform efforts was the doctrine of *parens patriae*. *See Ex parte* Ah Peen, 51 Cal. 280 (1876); *Ex parte* Crouse, 4 Whart. 9 (Pa. Sup. Ct. 1839).

12. The enabling legislation for the House of Refuge was the Act of Mar. 29, 1824, ch. 126, 1824 N.Y. Laws 110. *See generally* Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1969).

13. *See generally* S. JAMES, A PEOPLE AMONG PEOPLE: QUAKER BENEVOLENCE IN 18TH CENTURY AMERICA (1963).

14. The House of Refuge attempted to deal with minors who displayed antisocial conduct or committed minor offenses, in an effort to reform children who were not yet true criminals. This objective of crime and delinquency prevention still permeates the juvenile justice system today.

15. A report by the Society for the Prevention of Pauperism in New York City called for "the rescue of children from a future of crime and degradation": " 'Every person that frequents the out-streets of this city, must be forcibly struck with the ragged and uncleanly appearance, the vile language, and the idle and miserable habits of great numbers of children, most of whom are of an age suitable for schools, or for some useful employment. The parents of these children, are, in all probability, too poor, or too degenerate, to provide them with clothing fit for them to be seen in at School; and know not where to place them in order that they may find employment, or be better cared for. Accustomed, in many instances, to witness at home nothing in the way of example, but what is degrading; early taught to observe intemperance, and to hear obscene and profane language without disgust; obliged to beg, and even encouraged to acts of dishonesty, to satisfy the wants induced by the indolence

sought to reaffirm the traditional values of parental authority and education, as well as the values of rural life.[16]

By the latter half of the nineteenth century, a definite effort was under way to establish a separate system of justice for juveniles.[17] This effort culminated in 1899 in the institution by the Illinois legislature of the first separate juvenile court system in the nation.[18] Jurisdiction was removed from the state's adult courts because of the belief that children's deviant behavior should be regarded as misguided and errant rather than criminal. Under this new legislation, the state could intervene, not as a punitive force, but as a protector of the child.[19] Rehabilitation of the juvenile was the courts' main concern because children were assumed to be malleable and therefore salvageable.[20] The courts were not to be concerned with the guilt or innocence of the child but with "[w]hat he is, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career."[21] This philosophy doubtless was idealistic, assuming that children are largely the product of their environment and in

of their parents—what can be expected, but that such children will, in due time, become responsible to the laws for crimes . . . . Can it be consistent with real justice, that delinquents of this character, should be consigned to the infamy and severity of punishments, which must inevitably tend to perfect the work of degradation, to sink them still deeper in corruption, to deprive them of their remaining sensibility to the shame of exposure, and establish them in all hardihood of daring and desperate villainy? Is it possible that a Christian community can lend its sanction to such a process without any effort to rescue and to save?' " Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1189 (1969) (quoting SOCIETY FOR THE PREVENTION OF PAUPERISM IN THE CITY OF NEW YORK, REPORT ON THE SUBJECT OF ERECTING A HOUSE OF REFUGE FOR VAGRANT AND DEPRAVED YOUNG PEOPLE, *reprinted in* SOCIETY FOR THE REFORMATION OF JUVENILE DELINQUENTS, DOCUMENTS RELATIVE TO THE HOUSE OF REFUGE 13 (N. Hart ed. 1832)).

16. *See* Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 114 (1909). Importantly, this is still being done today in the form of state juvenile camps and ranches. *See* CAL. WELF. & INST. CODE §§ 654, 730 (West Supp. 1979); MASS. GEN. LAWS ANN. ch. 119, § 66 (West Supp. 1979).

17. *See* Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1221-31 (1969).

18. Act of April 21, 1899, 1899 Ill. Laws 131. The original juvenile court included most of the procedures recognized as distinctive features of juvenile courts today. Hearings were informal and private, records were confidential, and children had separate detention facilities and personnel. *See* Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).

19. Underlying the juvenile court system is the doctrine of *parens patriae*, the assumption being that the status of youth is different from the status of adulthood—youth status carries with it special protections.

20. *See* TASK FORCE REPORT, *supra* note 2, at 22; *see also In re* Herrera, 23 Cal. 2d 206, 213, 143 P.2d 345, 348 (1943).

21. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119-20 (1909). It was this principle which was declared in the Act of 1899 under which the Juvenile Court of Cook County, Illinois, was opened. "Why is it not just and proper to treat juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discoverable by the authorities? . . . [T]o take him in charge, not so much as to

their formative years can benefit from rehabilitative treatment. These lofty ideals of the reformers, supported by the doctrine of *parens patriae*, were incorporated into the growing number of state juvenile court acts.[22]

Jurisdiction Over Noncriminal Youths

The reformers of the nineteenth century neither attempted to limit juvenile court jurisdiction nor to distinguish between criminal and noncriminal children. Rehabilitative goals were so heavily stressed that the courts were not concerned with whether the child had committed any criminal wrong.[23] As a result of the emphasis upon these goals, jurisdiction of the juvenile court was not limited to criminal conduct. Indeed, juvenile codes often defined, and continue to define, "status offenses"—instances of antisocial but noncriminal behavior[24]—in language so broad that conceivably every child in the United States could be brought within the juvenile court's jurisdiction[25] if a judge so de-

punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.

"And it is this thought—the thought that a child who has begun to go wrong, who is incorrigible, who has broken a law or an ordinance, is to be taken in hand by the state, not as an enemy but as a protector, as the ultimate guardian, because either the unwillingness or inability of the natural parents to guide it toward good citizenship has compelled the intervention of public authorities." *Id.* at 107.

22. By 1925, juvenile courts existed in all but two states. Today every state has a juvenile court system. TASK FORCE REPORT, *supra* note 2, at 3. *See* CAL. WELF. & INST. CODE § 202(a) (West Supp. 1979) which reads: "The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the state . . . ." *See also In re* William M., 3 Cal. 3d 16, 473 P.2d 737, 89 Cal. Rptr. 33 (1970); *In re* A.J., 274 Cal. App. 2d 199, 78 Cal. Rptr. 880 (1969).

23. Subsequent amendments to the acts brought cases of dependency, truancy, neglect, unruliness, and incorrigibility under one jurisdiction. *See* Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107-11 (1909).

24. Juveniles are termed status offenders because it is their state of being, their alleged incorrigibility or unruliness, rather than a criminal offense, which brings them before the courts. Their only offense against society is doing something that would not be legally prohibited if done by an adult. *See* CAL. WELF. & INST. CODE § 601 (West Supp. 1979).

25. ASSEMBLY REPORT, *supra* note 2, at 21. *See* TASK FORCE REPORT, *supra* note 2, at 25; E.S.G. v. State, 447 S.W.2d 225, 232 (Tex. Ct. Civ. App. 1969). *See generally* DEL. CODE ANN. tit. 10, § 901(7) (1975) (so as to endanger the morals or health of self or others); D.C. CODE ANN. § 16-2301(8)(B) (Supp. 1978) (in need of care or rehabilitation); LA. REV. STAT. § 13:1570 (West Supp. 1979) (injurious to own welfare).

Even before the establishment of the first juvenile court, the Illinois Supreme Court in People v. Turner, 55 Ill. 280 (1870), expressed concern with "catch all" statutes. The court there addressed the constitutionality of a statute permitting commitment school for anyone under twenty-one who was vagrant, destitute of parental care, or growing up in idleness or vice. The court struck down the statute, concluding that such a restraint upon noncriminal behavior amounted to tyranny and oppression.

sired. The basic philosophy supporting this expansive approach was that the court should intervene on behalf of every child in need of help, for whatever reason and however that need manifested itself.

Based on this nineteenth century philosophy, every state currently has extended its juvenile court's power to intervene in cases involving status offenses.[26] Status offense jurisdiction typically covers a wide spectrum of conduct, including truancy, running away from home, incorrigibility, disobedience, and being in danger of leading an idle, dissolute, lewd, or immoral life.[27] These juvenile codes, however, generally fall short of the specificity that would allow a minor to determine what behavior falls within the prohibitions of the statute,[28] and

26. All fifty-one juvenile codes, including the District of Columbia, extend the jurisdiction of the juvenile courts to include not only dependent and neglected children and those who violate the criminal law, but also juveniles who exhibit certain noncriminal behavior. CAL. WELF. & INST. CODE § 601 (West Supp. 1979) reads: "Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardians, or custodian, or who is beyond the control of such person . . . is within the jurisdiction of the juvenile court which may adjudge such a person to be a ward of the court." *See, e.g.*, ILL. ANN. STAT. ch. 37, § 702-703 (Smith-Hurd 1972); N.Y. FAM. CT. ACT §§ 712, 713 (McKinney Supp. 1978); VA. CODE § 16.1-241 (Supp. 1979).

27. CAL. WELF. & INST. CODE § 601 contained such terminology before it was amended in 1975 to delete "or who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life." Cal. Stat. 1975, ch. 192 § 1; ch. 1183, § 2.

28. *See generally* Gesicki v. Oswald, 336 F. Supp. 371 (S.D.N.Y. 1971), *aff'd*, 406 U.S. 913 (1972). Due process also requires that statutes provide adequate standards to prevent arbitrary and capricious enforcement. *See* Grayned v. City of Rockford, 408 U.S. 104, 108 (1972); Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972).

Vaguely written statutes, when applicable to adults, have been held invalid, as they create an unreasonable restraint upon personal liberty. The United States Supreme Court has addressed the problem of vaguely written statutes on numerous occasions. The general rule is that a statute is violative of the essentials of due process when it either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. Connally v. General Constr. Co., 269 U.S. 385, 391 (1926); Wheeler v. Goodman, 306 F. Supp. 58 (W.D.N.C. 1969). *See generally* Note, *Statutory Vagueness in Juvenile Law: The Supreme Court and Mattiello v. Connecticut*, 118 U. PA. L. REV. 143 (1969). Yet statutes that label children as incorrigible or wayward generally have been held to be constitutional. *See In re* Daniel R., 274 Cal. App. 2d 749, 79 Cal. Rptr. 247 (1969); District of Columbia v. B.J.R., 332 A.2d 58 (D.C. Ct. App.), *cert. denied*, 421 U.S. 1016 (1975); *In re* Napier, 532 P.2d 423 (Okla. Sup. Ct. 1975); Blondhiem v. State, 84 Wash. 2d 874, 529 P.2d 1096 (1975). *Cf.* Gesicki v. Oswald, 336 F. Supp. 371 (S.D.N.Y. 1971), *aff'd*, 406 U.S. 913 (1972) (statute directed at minors unconstitutionally vague).

The explanation for this difference in treatment between adults and children is usually couched in terms of the doctrine of *parens patriae*. The statutes are not punishing juveniles, but allowing the court to act in what it believes to be in the best interest of the child in order to produce a responsible citizen. *See* People v. Deibert, 117 Cal. App. 2d 410, 415, 256 P. 355, 358 (1953). Notwithstanding the highly enlightened motives of the juvenile laws, it appears that many juvenile behavior laws may be unconstitutionally vague and violative of due process. In light of the Supreme Court's grant of most due process safeguards to juvenile delinquents, it follows that noncriminal juveniles should not be forced to defend against

often encompass a virtual "manual of undesirable youthful behavior."[29]

Until recently, most states included such broad language defining jurisdiction over noncriminal behavior in the same statutory provision that controlled criminal behavior. All deviant juvenile behavior was classified as "delinquent."[30] Recently, however, a number of states have divided juvenile misconduct into separate categories, one for criminal behavior and one for status offenses.[31] A youngster who commits a status offense may be labeled a "person in need of supervision" (PINS),[32] "ungovernable," "incorrigible," an "unruly child," and the like.

These statutory attempts to distinguish criminal from noncriminal youths presumably were an attempt to prevent the stigma of "delinquency" from attaching to status offenders and to increase the benefits of court involvement in the lives of status offenders. The actual impact of these semantic distinctions, however, has been minimal as the distinctions are not accompanied by any differences in treatment. Courts still are allowed to assert jurisdiction over youths who have committed no crime, but merely are unable to adjust to difficult family environments, to handle the pressures of school, or to cope with the demands of today's youth culture.[33] In general, these status offenders are treated identically to juveniles who violate the criminal law. Both can be adjudged wards of the court and placed outside their homes in private institutions, training schools, foster homes, or juvenile camps and ranches.[34] Consequently, status offenders are likely to bear the same

vaguely written laws. This is especially valid since in practice there is little difference between the treatment of the status offender and the juvenile criminal. *See generally* McKeiver v. Pennsylvania, 403 U.S. 528 (1971); *In re* Winship, 397 U.S. 358 (1970); *In re* Gault, 387 U.S. 1 (1967); Kent v. United States, 383 U.S. 541 (1966).

29. TASK FORCE REPORT, *supra* note 2, at 22.

30. *See* Note, *The Dilemma of the Uniquely Juvenile Offender*, 14 WM. & MARY L. REV. 386, 388 (1972). *See also* DEL. CODE ANN. tit. 10 §§ 901(7), 921(1) (1975); IND. CODE ANN. § 31-5-7-4.1 (Burns 1978); S.C. CODE § 43-17-10 (1978).

31. In the 1960s, California and New York rewrote their juvenile laws to separate noncriminal offenders from criminal offenders by creating a new noncriminal category in addition to the classifications of neglect and delinquency. Today, twenty-five states have created separate categories for status offenders. *See, e.g.*, CAL. WELF. & INST. CODE § 601 (West Supp. 1979); N.Y. FAM. CT. ACT § 712 (McKinney Supp. 1978).

32. Also referred to as CHINO, CINS, MINS, YINS, and JINS.

33. *See* Bayh, *Juveniles and the Law: An Introduction*, 12 AM. CRIM. L. REV. 1, 5 (1974).

34. Some states place restrictions on the disposition alternatives available to the juvenile court judge for status offenders. For the alternatives available to a judge in California, see notes 42-68 & accompanying text *infra*. *See generally* D.C. CODE ANN. § 16-2313 (Supp. 1978); N.Y. FAM. CT. ACT § 754 (McKinney Supp. 1978); N.D. CENT. CODE § 27-20-32 (1974).

stigma as criminal delinquents.[35] These efforts at separation, although laudable as a step toward more effective rehabilitation of juvenile status offenders, realistically create little more than a distinction without a difference. Despite the original hopes, any distinction in the juvenile codes between criminal and noncriminal youths has failed to affect the treatment that noncriminal youths currently receive.

The Decriminalization Trend

The mid-1970s witnessed a widespread trend in the juvenile justice system toward decriminalizing status offenses. This trend, which went well beyond changes in statutory definitions, was prompted, at least in part, by the passage of the federal Juvenile Justice and Delinquency Prevention Act of 1974.[36] The purpose of the Act was to help states, local communities, and public and private agencies develop and conduct effective delinquency prevention programs, to divert more juveniles from the juvenile justice process, and to provide alternatives to traditional detention and correctional facilities.[37] The Act provided for grants of federal funds to carry out these congressional directives,[38] which directives were based on a recognition that a large percentage of youths held in correctional institutions were not guilty of any crime, but were brought into the system merely because of their age.[39]

In support of the Act, professionals argued that detaining noncriminal youths in the same facilities as criminal offenders and subjecting them to the same treatment can affect their self-conceptions sufficiently to shape future conduct along more criminal lines.[40] They believed that the program for status offenders should offer treatment

Federal funds are available to finance separate facilities for nondelinquents. *See* 42 U.S.C.A. § 5711 (West Supp. 1979).

35. See notes 72-84 & accompanying text *infra*.

36. Pub. L. No. 93-415, 88 Stat. 1109 (1974) (current version at 42 U.S.C.A. §§ 5601-5751 (1977 & Supp. 1979)). The Act deals with both criminal and noncriminal youth. The Act was developed during a four-year investigation conducted by the United States Senate Subcommittee to Investigate Juvenile Delinquency and was supported by citizens groups and bipartisan majorities in Congress. The Senate vote was 88-1 and the House vote 329-20.

37. *See* 42 U.S.C. § 5602 (1976). The Act also created a National Institute for Juvenile Justice with the Law Enforcement Assistance Administration's National Institute of Law Enforcement and Criminal Justice to serve as a center for national efforts in juvenile delinquency evaluation, data collection, research, and training. *Id.* §§ 5651-5661.

38. *Id.* §§ 5631-5633.

39. "Nearly 40% of the children brought to the attention of the juvenile justice system have committed no criminal act, in adult terms, and are involved simply because they are juveniles." S. REP. No. 93-1011, 93d Cong., 2d Sess. 4 (1974), *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 5287 [hereinafter cited as CONG. & AD. NEWS]. *See also* ABA-IJA, JUVENILE JUSTICE STANDARDS PROJECT, *Noncriminal Misbehavior* 1-2 (Tent. Draft 1977) [hereinafter cited as STANDARDS].

40. *See generally* CONG. & AD. NEWS, *supra* note 39, at 5288; L. RICHETTE, THE THROWAWAY CHILDREN (1969).

different from that afforded criminal offenders and that rehabilitation, not punishment, should be emphasized. The placement of status offenders in secure facilities with criminal offenders was not considered to be conducive to this rehabilitative goal.[41]

The California Response

California, considered to be in the vanguard of juvenile justice reform, was one of the first states to respond to the problems of the status offender.[42] In 1976, the California Legislature approved Assembly Bill 3121, a broad revision of the juvenile court system, which, in part, amended the Welfare and Institutions Code to deinstitutionalize the status offender.[43] The revised Welfare and Institutions Code section 207 mandates that status offenders be confined to non-secure institutions only.[44] Minors who commit status offenses in California no longer are treated as if the public needs to be protected from them.

In response to the directives of the legislature, California probation departments attempted to establish non-secure facilities, crisis resolution homes, and sheltered care facilities as authorized by the Welfare and Institutions Code.[45] More family counseling and crisis intervention services were provided.[46] This trend away from formal

41. See notes 82-84 & accompanying text *infra*.

42. New York also was among the first states to respond to the trend to end the inappropriate institutionalization of young people. By 1977, New York had closed state training schools to the placement of "persons in need of supervision" (PINS) and had substituted a variety of other noninstitutional programs. As stated by Governor Hugh L. Carey: "We established small group residences in communities, family foster care, and non-residential services for youngsters who could remain with their families by virtue of the added help and services. We recognized the need to nurture the good qualities of our youth, and provide the kind of environment that would enable them to become responsible, contributing members of society." Carey, *A Positive Perspective*, TRIAL, January 1979, at 33.

43. The initial amendments to the juvenile laws placed the prohibition on secured placement in § 507 of the Welfare and Institutions Code. A cleanup bill which followed AB 3121 called for the placement of the prohibition in § 207 of that code. Section 207(b) reads: "[N]o minor shall be detained in any jail, lockup, juvenile hall, or other secure facility who is taken into custody solely upon the ground that he is a person described by Section 601 or adjudged to be such or made a ward of the juvenile court solely upon that ground . . . . If any such minor . . . is detained, he shall be detained in a sheltered-care facility or crisis resolution home as provided in Section 654, or in a non-secure facility provided for in subdivision (a), (b), (c), or (d) of Section 727." CAL. WELF. & INST. CODE § 207(b) (West Supp. 1979).

44. CAL. WELF. & INST. CODE § 207(b) (West Supp. 1979).

45. *See id.* §§ 654, 727 (West Supp. 1979). Each county has developed its own procedure, and in some cases unique programs, to carry out the intent of the legislature. Many jurisdictions sought to provide facilities which were a bona fide alternative to secure detention at juvenile hall, for example, the Perry Place program in Alameda County. See notes 95-109 & accompanying text *infra*. Other jurisdictions, such as San Francisco, merely removed the locks from some of the cottages at juvenile hall.

46. Whether AB 3121 encouraged this shift to increased services, or if it simply came

court proceedings and detention and toward more informal community services generally was supported.[47]

Despite the laudable goals of the legislature and the efforts of probation departments, problems developed.[48] Of these problems, the one that received the most attention arose from concern for those status offenders who were not amenable to informal services in a non-secure setting. This concern surfaced in the opinion in *In Re Ronald S.*[49] Ronald, a thirteen year old, was adjudged a ward of the court under California Welfare and Institutions Code section 601.[50] He was sent to a non-secure crisis center under an order to remain there, but promptly left the same day. Ronald's conduct apparently was not unusual. Justice Gardner of the California Court of Appeal wrote:

> 601's are often somewhat irresponsible, not to say nomadic. . . . An immediate result of the 1976 amendment [AB 3121] was that while authorities were doing the preliminary paperwork at the front door of a non-secure home for a runaway, the runaway was simply running away again out the back door. Placing a runaway in a non-secure environment is something of an exercise in futility.[51]

Justice Gardner, although noting that "it may seem ridiculous to place a runaway in a non-secure setting,"[52] concluded that the decision to place runaways in such facilities had been made by the legislature, leaving him no alternative but to follow the legislative mandate.[53]

Justice Gardner's point of view, reflecting the dissatisfaction of many juvenile court judges with the liberal placement policies implemented by the 1976 changes in the California Welfare and Institutions Code,[54] was shared by law enforcement officials and by many par-

along after the fact, noting the trend to remove status offenders from the juvenile court jurisdiction, is an open question. In any case, more juveniles are now being served through community based programs than prior to AB 3121. *See* CALIFORNIA YOUTH AUTHORITY, AB 3121 IMPACT EVALUATION 24-25 (1978).

47. *Id.*

48. For example, the legislation did not specify who was to be responsible for programs for status offenders and what kinds of services were to be provided.

49. 69 Cal. App. 3d 866, 138 Cal. Rptr. 387 (1977). As Justice Gardner of the California Court of Appeal noted: "[o]ne small cloud, the size of a delinquent child's hand immediately appeared on the judicial horizon." *Id.* at 872, 138 Cal. Rptr. at 391.

50. See note 26 *supra* for text of section 601.

51. 69 Cal. App. 3d at 872, 138 Cal. Rptr. at 391-92.

52. *Id.* at 873, 138 Cal. Rptr. at 392.

53. In Justice Gardner's words, "[a]s the law now stands, the legislature has said that if a 601 wants to run, let him run." *Id.* at 874, 138 Cal. Rptr. at 392.

54. "If the juvenile court is to be saddled with responsibility for 601's, it must also be afforded the tools and authority to handle those cases." *Id.* at 875, 138 Cal. Rptr. at 393. Without the power to put orders and decisions into effect, there seems little reason to devote judicial resources to adjudication and placement.

ents.[55] Parents were alarmed by situations in which they would receive a phone call from the police concerning their runaway son or daughter. Often, before the parents could arrive at the police station to retrieve their child, the child would have left of his or her own accord[56] because the police had no power to hold the child.[57] Police and probation officers argued that the power to hold status offenders was essential to solving the problems of noncriminal youth.[58]

In 1978, the legislature responded by enacting Assembly Bill 958,[59] which provides limited circumstances in which a minor can be detained in a secure facility. Under the provisions of the bill, a juvenile can be held for up to twelve hours for a warrant check,[60] and up to twenty-four hours to locate the minor's parents or guardian and to arrange the return of the minor to them.[61] Proponents of the bill saw it as a necessity for law enforcement and probation personnel, reasoning that if the court is to be responsible for status offenders it must be given the authority to handle them.[62]

The bill was not without its opponents.[63] One critic argued that

55. Interview with Peter Bull, Director of the National Center for Youth Law, San Francisco Office, in San Francisco (Jan. 10, 1979).

56. *Id.*

57. CAL. WELF. & INST. CODE § 207(b) (West Supp. 1979) (amended 1978) provides: "[N]o minor shall be detained in any jail, lockup, or juvenile hall, or other secure facility who is taken into custody solely on the ground that he is a person described by Section 601 . . . ." *See also* N.Y. FAM. CT. ACT §§ 718, 720 (McKinney Supp. 1978).

58. "Police argued that if they had the power to hold juvenile status offenders, at least for a few days, this would give the juveniles time to realize the realities of their situation, and then they would be more receptive to the services available." Interview with Peter Bull, Director of the National Center for Youth Law, San Francisco Office, in San Francisco (Jan. 10, 1979).

59. AB 958 was introduced in the California legislature regular session by Assemblyman Julian Dixon. Among the changes worked by AB 958 was the addition of subsection (c) to Welfare and Institutions Code § 207, which sets forth limited circumstances under which a status offender may be retained for a specified period of time.

60. CAL. WELF. & INST. CODE § 207(c)(1) (West Supp. 1979). Such detention is permitted where "the arresting officer or probation officer has cause to believe that . . . wants, warrants, or holds exist." *Id.*

61. *Id.* § 207(c)(2). Section 207(c)(3) permits a detention pending location of parents or guardian which may be extended to up to seventy-two hours if the minor's parents or guardian are not California residents and if "the distance of the parents or guardian from the county of custody, difficulty in locating the parents or guardian, or difficulty in locating resources necessary to provide for the return of the minor" makes earlier return unreasonably difficult. *Id.* § 207(c)(3).

62. *See In re* Ronald S., 69 Cal. App. 3d 866, 138 Cal. Rptr. 387 (1977). "Certainly not all 601's need to be placed in secure facilities. However, some do and in these cases the juvenile court judge must have the authority to detain in a secure facility—if 601's are to remain in the juvenile court." *Id.* at 875, 138 Cal. Rptr. at 393.

63. *See* San Francisco Examiner, Sept. 2, 1978, at 6, col. 1.

"[t]he crime we are incarcerating people for is being a minor,"[64] and another considered the bill as allowing "police to hold a youngster for no reason."[65]

AB 958 granted police the authority to keep status offenders under lock and key, but it does not require such action. As a practical matter, the authority to detain is rarely used. Numerous counties have decided not to make use of the new law,[66] perhaps because of the costs involved[67] or because they have developed other successful programs for handling these juveniles.[68] AB 958 could have slowed the trend toward deinstitutionalizing status offenders which began in California with Assembly Bill 3121 in 1976. The legislation has functioned, however, more to appease those in opposition to deinstitutionalization than actually to affect the treatment of status offenders. Thus, California effectively has taken long strides toward decriminalizing status offenses and removing noncriminal youths from the institutional setting. The mechanisms for dealing with these youths operate largely outside the courtroom, yet status offenders remain subject to judicial intervention. The following discussion details the need to extend this trend even further than California has, by eliminating juvenile court jurisdiction over status offenders.

The Need for Change in the Treatment of Status Offenders

Thousands of noncriminal juveniles have passed through the traditional juvenile court system since its inception in 1899. These juveniles have been counseled, placed on probation, put in foster homes, made wards of the court, sent to juvenile camps, and even committed to juvenile institutions. Yet the evidence which exists does not show that any significant number of these children have benefited.[69]

64. *Id.* (quoting Senator Milton Marks).

65. *Id.* (quoting Senator Paul B. Carpenter).

66. For example, according to Lin Barrett of the Alameda County Probation Department, the Alameda County Justice Council has recommended that the county not make use of the new law. Joe Botka, Chief Probation Officer of the San Francisco Juvenile Court, has stated San Francisco also is not taking advantage of the new provisions. San Francisco Chronicle, Jan. 4, 1979, at 21, col. 4.

67. Section 207 as amended prohibits any 601 minor detained in juvenile hall from coming into contact with a minor detained pursuant to § 602. CAL. WELF. & INST. CODE § 207(d) (West Supp. 1979). While AB 958 appropriated $1,500,000 for allocation and disbursement to local agencies for costs incurred in implementing the amended portions of § 207, the amount was not sufficient.

68. San Francisco Chronicle, Jan. 4, 1979, at 21, col. 1. Alameda County, California, for example, has developed Perry Place in Oakland and Harder Road in Hayward. For a discussion of the Perry Place program, see notes 95-109 & accompanying text *infra*.

69. TASK FORCE REPORT, *supra* note 2, at 7; ASSEMBLY REPORT, *supra* note 2, at 31.

According to the California Interim Committee on Criminal Procedure:

> No one can prove that truants who have become wards of the court end up better educated than those who do not. No one can show that promiscuous teenagers who are institutionalized have fewer illegitimate children than those who are not. Nor can anyone show that runaways who become wards of the court end up leading better adjusted lives than those who do not. Finally, no one can prove that unruly, disobedient minors who come under court supervision end up in prison less often than those who do not.[70]

Notwithstanding the great hopes originally held for the juvenile court system, it has not succeeded in significantly rehabilitating youths or bringing justice to children. Instead, it has imposed what amounts to punishment upon children who have committed no crime. This failure of juvenile courts to perform their rehabilitative and preventative functions has led to increasing scrutiny of the jurisdiction of juvenile courts over status offenders during the past decade.[71] Not only has the treatment of status offenders in the traditional justice system been less effective than expected, it has created new problems both for the juvenile and for the judicial system.

The first major problem results from the psychological and sociological effects of juvenile court proceedings on the youth involved. A juvenile subjected to status offense jurisdiction is tried and subsequently treated in almost the same manner as a minor accused of a crime.[72] Because of this close association with criminal procedures, the public tends to consider a juvenile to be "delinquent" if he or she has been subject to either type of court proceeding.[73] Despite the difference in the degree of wrongdoing, generally no distinction is made between the delinquent child who has committed a criminal act and the status offender. As a result, the stigma of being a "delinquent" affects status offenders as well as criminal offenders.

Perhaps the most serious result of this stigma is that the process may be producing in children exactly those traits sought to be avoided:[74]

> Official action may actually help to fix and perpetuate delinquency in the child through a process in which the individual begins to think of himself as delinquent and organizes his behavior accordingly. That process itself is further reinforced by the effect of the labeling upon the child's family, neighbors, teachers, and peers whose reactions

70. ASSEMBLY REPORT, *supra* note 2, at 30-31.

71. *See, e.g.*, note 88 & accompanying text *infra*.

72. *See* ASSEMBLY REPORT, *supra* note 2, at 12-14.

73. *See generally* Paulsen, *The Delinquency, Neglect, & Dependency Jurisdiction of the Juvenile Court*, in JUSTICE FOR THE CHILD 44, 45-46 (M. Rosenheim ed. 1962). Paulsen maintains that stigma attaches anytime the juvenile appears before the court.

74. CONG. & AD. NEWS, *supra* note 39, at 5288.

communicate to the child in subtle ways a kind of expectation of delinquent conduct.[75]

The rationale of this theory, the "labeling hypothesis,"[76] is that the official classification of a misbehaving youth as delinquent has the effect of reinforcing deviant behavior. The social rejections[77] caused by the stigma often reinforce a negative self-image, persuading the juvenile that he or she cannot survive in normal society.[78] The result is continued delinquency—the "self-fulfilling prophecy."[79]

Another aspect of the stigma affixed by involvement with the juvenile justice system lies in society's discrimination against such youths. Despite statutes requiring the confidentiality of juvenile court records,[80] records are frequently released to police, armed forces, potential employers, and government agencies.[81] In addition, employers can obtain this information, legally or illegally, by asking for it on applications or in interviews. Thus, prior juvenile court involvement may continue to stigmatize youths.

The second major problem area stems from the placement of noncriminal minors in the same post-disposition detention facilities as minors who are in custody for criminal offenses.[82] The criticism here is that children who have committed no crime are exposed to some of the worst representatives of their age group—murderers, thieves, and drug addicts—at a time in their lives when they are most susceptible to peer

75. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 80 (1967).

76. *See generally* R. MERTON, SOCIAL THEORY AND SOCIAL STRUCTURE (1957); E. SCHUR, LABELING DEVIANT BEHAVIOR (1971). For a discussion of the validity of the labeling hypothesis, see Jensen, *Delinquency and Adolescent Conceptions: A Study of the Personal Relevance of Infraction*, 20 SOC. PROB. 84 (1972).

77. "This official stamp [of delinquency] may help to organize responses different from those that would have arisen without the official action. The result is that the label has an important effect upon how the individual is regarded by others. If official processing results in an individual's being segregated with others so labeled, an additional push toward deviant behavior may result. . . ." TASK FORCE REPORT, *supra* note 2, at 417.

78. *Id.* at 93.

79. Merton, *The Self Fulfilling Prophecy*, 8 ANTIOCH REV. 194 (1948).

80. *See* CAL. WELF. & INST. CODE § 781 (West Supp. 1979); N.Y. FAM. CT. ACT § 166 (McKinney 1975). *See also In re* TNG, 4 Cal. 3d 767, 484 P.2d 981, 94 Cal. Rptr. 813 (1971); 55 Op. Att'y Gen. 175 (1972).

81. *See generally* Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 784-85, 800 (1966). *Cf.* PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 87-88 (1967) (recognizing the need for privacy while simultaneously recommending that reports be available to social agencies dealing with the juvenile when the information would not be injurious to him or her).

82. Some jurisdictions prohibit the detention of noncriminal youth with delinquent youth, *i.e.*, Alaska, California, District of Columbia, Massachusetts, New Jersey, New Mexico, and Oregon. For the law in California see note 59 *supra*. New York has imposed such a prohibition by judicial decision. *See In re* Ellery C., 32 N.Y.2d 588, 300 N.E.2d 424 (1973).

influences.[83] As noted by the California Interim Committee on Criminal Procedure, "[i]f any of them [status offenders] were ever on the verge of committing a criminal act, they have been brought to the right place for the final push."[84]

The third major problem is the misuse of status offense jurisdiction by parents to divest themselves of an undesirable or misbehaving child. At their discretion, parents can bring their children to court, armed with sufficient evidence to assure that the court will intervene and detain the child. This presents an easy method for abdicating parental responsibility when a child presents behavioral problems. Misapplication of the status offense jurisdiction also can occur when the court is used by parents to punish their children.

Practical problems in court administration also are part of the consideration for abolition of juvenile court jurisdiction over status offenders. The problems of overcrowded court calendars and tremendous pressure on court time found in adult courts exist in the juvenile courts as well.[85] Preoccupation with status offenses has resulted in heavily overloaded juvenile courts, leaving judges and probation officers with too little time and too few resources to deal adequately with the juveniles who commit criminal acts. Removing status offense cases from the purview of the juvenile court would lessen this burden significantly. Moreover, by instituting alternatives to the courts' jurisdiction, problems could be handled more immediately, at the onset of the crisis, rather than after the passage of weeks or months during which attitudes and positions have hardened.[86]

Finally, status offense cases, far more than child neglect or criminal violation cases, present issues that are peculiarly ill-suited for, and not served by, legal analysis and judicial fact-finding. In addition, by placing the family dispute in a court setting, the child and parents are forced to assume undesirable adversary positions. While the judicial system may be capable of determining whether a person committed a given act, it is "incapable . . . of effectively managing, except in a very gross sense, so delicate and complex a relationship as that between par-

83. Moreover, secure institutions housing criminal violators are necessarily geared to the custodial demands of the worst of the inmates, and the treatment for which the unruly child was committed is often nonexistent. *See generally* Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973); Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972); Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind. 1972), *supplemental opinion*, 355 F. Supp. 458, *aff'd*, 491 F.2d 352 (7th Cir. 1974); Note, *Persons in Need of Supervision: Is There a Constitutional Right to Treatment*, 39 BROOKLYN L. REV. 624 (1973).

84. ASSEMBLY REPORT, *supra* note 2, at 14.

85. T. RUBIN, LAW AS AN AGENT OF DELINQUENCY PREVENTION 2 (1970) (prepared for Delinquency Prevention Strategy Conference).

86. The juvenile court process is frequently plagued with delays. *See* C. SILBERMAN, CRIMINAL VIOLENCE, CRIMINAL JUSTICE 309-70 (1978).

ent and child."[87]

For these reasons, serious consideration often has been given to eliminating juvenile court jurisdiction over noncriminal conduct.[88] The removal of status offenses from the jurisdiction of the juvenile court would seem to be a logical complement to the present trend toward deinstitutionalizing status offenders.[89] Status offenders constitute a different group of youths than the juvenile criminal offenders. These youths have violated no penal statutes and should not be treated as if they had. The problems of these children are more representative of personal and family difficulties.[90] The need for alternative methods of dealing with noncriminal youths is evident,[91] and the seriousness of the

87. J. GOLDSTEIN, A. FREUND & A. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD 8 (1973).

88. The President's Crime Commission offered this solution in 1967. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 228 (1967). Others have come to a similar conclusion, including the National Council on Crime and Delinquency in 1970. *See* Policy Statement, *Crimes Without Victims*, 17 CRIME & DELINQUENCY 129 (1971). *See also* Gonin, *Section 601 California Welfare and Institutions Code: A Need for a Change*, 9 SAN DIEGO L. REV. 294 (1972), noting the Los Angeles Superior Court Special Committee on Judicial Reform recommendation that § 601 be eliminated. The Committee stated that § 601 "in effect permits irresponsible parents, overworked or ineffective school personnel and agencies unable to effectively collect evidence to establish parental neglect, to 'put a record' on a youngster who, in most cases, is not the one primarily responsible for the activity involved. It is a section ofttimes used against dependent and neglected children who are difficult to handle in company with other dependent and neglected children. It is also used as a 'dealing' section to encourage a plea where a delinquency conviction could not be sustained. The experience of juvenile court judges has been that the intrusion of the court often accentuates and perpetuates the family schism that is characteristic of the 601 case." *Id.* at 309.

89. Maine has virtually eliminated court jurisdiction over status offenders, placing the responsibility for handling family conflicts and school problems on the family, school, and government services. *See* ME. REV. STAT. ANN. tit. 22, §§ 3701-04, 3803, 3891-A to -F (Supp. 1978).

Utah requires that cases involving runaways or children beyond the control of their parents or school be referred first to the division of family services; only by reference of a specified agency can the matter be referred to the juvenile court. *See* UTAH CODE ANN. §§ 78-3a-1 to 78-3a-16.5 (1953 & Supp. 1979).

Virginia, Washington, Massachusetts, New Mexico and Florida also have barred or limited substantially the placement of status offenders in jails, detention, or correctional facilities. *See, e.g.*, VA. CODE §§ 16.1-246, 16.1-249 (Supp. 1979).

90. Some types of behavior for which youth are brought into court under status offense jurisdiction are considered normal and healthy by psychologists. *See* J. GOLDSTEIN, A. FREUND & A. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD 34 (1973).

91. Juvenile noncriminal misbehavior in Scotland and Sweden currently is handled without court involvement. For a discussion of the unique system of juvenile justice in Scotland, see Fox, *Juvenile Justice Reform: Innovations in Scotland*, 12 AM. CRIM. L. REV. 61 (1974).

For a discussion of the arguments against the abolition of juvenile court jurisdiction over status offenders, see Gregory, *Juvenile Court Jurisdiction Over Noncriminal Misbehavior:*

situation demands that a change be made soon.[92]

Proposed Alternatives For the Treatment of Status Offenders

The decriminalization of status offenses cannot be realized fully unless the present treatment of noncriminal youths is changed. Noncriminal youths are in need of services which can be administered more effectively by non-coercive programs within the community than through court adjudication. Recognition of noncriminal antisocial behavior as a manifestation of family and personal problems is a necessary first step toward these types of changes and toward effective rehabilitation of status offenders.[93] Successful rehabilitation requires a shift away from the punishment imposed by juvenile courts and a move toward the involvement of professionals trained to respond to family, emotional, and school problems.

Many such alternatives to juvenile court jurisdiction have been proposed, and some have been instituted.[94] Two proposals in particular deserve further discussion. The first alternative involves the establishment of community-based services, and the second involves the use of advisory arbitration as an alternative to court adjudication.

Community-Based Youth Services: A Model

A community-based youth service which already has proven to be a successful alternative to the treatment of status offenders can be found at Perry Place. Perry Place is a community-home (also referred to as a crisis resolution home) located in Oakland, California.[95]

The Perry Place program is part of a new approach to status offenders in Alameda County. Under the Alameda County program, status offenders who otherwise would be routed through the juvenile court

The Argument Against Abolition, 39 OHIO ST. L.J. 242 (1978); Pabon, *Changes in Juvenile Justice: Evolution or Reform*, NAT'L ASS'N SOC. WORKERS, November 1978, at 472.

92. This Note deals with possible alternative methods of dealing with juvenile noncriminal misbehavior. It is important to realize, however, that to prevent juvenile misbehavior effectively, the problem must be dealt with in its broader outlines, attacking the conditions of society which underlie problems of youth. Society should be concerned equally with the causes of juvenile problems, which go beyond the individual, arising from a vast network of factors, including family, friends, and community. Efforts should be made to reduce unemployment, improve housing and recreational facilities, involve youth in community activities, and the like. *See* TASK FORCE REPORT, *supra* note 2, at 41-56.

93. Criminal behavior may also stem from family and personal problems. However, a discussion of criminal behavior is beyond the scope of this Note.

94. See the discussion of Perry Place and advisory arbitration in notes 95-123 & accompanying text *infra*.

95. The Perry Place program was established prior to the enactment of AB 3121, with funds from a grant ($1.5 million). The program is now run by the Children's Home Society under a contract with the Alameda County Probation Department.

process are taken to Perry Place. Perry Place is a large house in an attractive residential part of Oakland, described as having a "homey, nonprisonlike atmosphere."[96] The Perry Place house accomodates six youngsters and a fulltime staff of professional counselors and para-professionals trained to deal with the problems of youths.

The basic philosophy of Perry Place is that the juveniles brought to the facility are deserving of care, understanding, respect, and consideration.[97] Under this approach, "status offenders are no longer considered a juvenile justice problem. They are a social problem, and counseling rather than arrest, is in order."[98] One of the cornerstones of the operation of Perry Place is that a child should be responsible for his or her conduct.[99] The expectation of responsibility is a very important component of the program. From the time a juvenile arrives, the child must decide whether to discuss his or her situation with the staff. The child has the responsibility to determine whether to stay at Perry Place,[100] and whether to participate with his or her family in a counseling session.[101] The expectation of responsibility also assumes more concrete manifestations. The child is expected to help in the preparation of meals, participate in housekeeping tasks, and behave toward others in the home in a responsible and appropriate manner. Moreover, all of these changes generally are compressed into a short time frame, because under present law a juvenile shall be released within forty-eight hours if no court order has been obtained.[102]

During this period family counseling sessions are arranged. With the aid of family crisis counselors, the juvenile and the family meet to resolve the juvenile's problem or the family conflict that precipitated the crisis requiring the youth to be taken to Perry Place. Priority is placed on resolving the crisis and returning the youth to the family

96. San Francisco Chronicle, Jan. 4, 1979, at 21, col. 4.

97. Interview with Mimi Levine, Director of Perry Place, in Oakland, California (Jan. 15, 1979). The discussion in the text about the program at Perry Place is based on this interview with Ms. Levine.

98. San Francisco Chronicle, Jan. 4, 1979, at 21, col. 1.

99. Interview with Mimi Levine, Director of Perry Place, in Oakland, California (Jan. 15, 1979). The concept of responsibility bears noting for it permeates the alternatives to juvenile court jurisdiction proposed in this Note. Responsibility for one's conduct is important to both the use of voluntary community services and the use of mediation-arbitration. See notes 116-17 & accompanying text *infra*.

100. Perry Place has a remarkably low "walk away" rate; only about 10% of the residents leave without permission. In contrast, in San Francisco, where status offenders are kept in unlocked cottages at the juvenile hall, the walk away rate is approximately 25%. San Francisco Chronicle, Jan. 4, 1979, at 21, col. 1.

101. *Cf.* STANDARDS, *supra* note 39, § 4.2, at 52 (stating services of juvenile justice agencies should be offered on a voluntary basis).

102. CAL. WELF. & INST. CODE § 313 (West Supp. 1979).

home.[103] If such a return is determined not to be in the best interest of the youth, family, or community, an attempt is made to locate an alternative voluntary placement[104] for the youth, with the consent of the parents. Voluntary placements generally are effectuated in the home of a relative or family friend. When a voluntary placement is made, follow-up efforts are made to ensure that the placement is the most appropriate alternative, and referrals are made to counseling services in the hope that a family reconciliation can be achieved.

To complement the program at Perry Place, Alameda County has developed a comprehensive range of social services which provide needed help to both youths and parents.[105] This program includes crisis intervention counseling[106] to deal with immediate and acute problems, long-term counseling services,[107] referrals to other appropriate community resources, and a foster home program.

Although no definite statistics exist as to the frequency of reinvolvement with the juvenile justice system and the number of family reconciliations, services outside the juvenile court system have proved to be a feasible and realistic approach to the handling of noncriminal misbehavior.[108] While many jurisdictions are struggling with the attitude that nothing can be done with status offenders without the authority to detain them, Perry Place demonstrates that "you don't

103. "The place for most children is with their families." STANDARDS, *supra* note 39, § 5.3, Commentary, at 56.

104. "Voluntary placement" means that the placement outside the family home must be with the full accord of both the juvenile and the parents or guardian. In essence, voluntary placement is a private matter between the parents and the child without public sanction. If either objects to the placement, the placement becomes involuntary. With the Perry Place program, a court petition is filed in Alameda County only when the involuntary placement of a juvenile outside the family home is required.

105. *See* STANDARDS, *supra* note 39, § 4.1, at 52.

106. *Id.* § 4.3, at 53.

107. *Id.*

108. One of the primary concerns when abolishing juvenile court jurisdiction over status offenders and instituting a comprehensive social services plan is the financial consequences. This cost concern is especially relevant in view of the pressures of inflation and severe budget cutbacks.

In a cost analysis study conducted in 1977, it was found that the costs of alternatives to detention and correctional facilities were, with few exceptions, less than the per unit cost of maintaining children in secure detention and correctional facilities. ARTHUR D. LITTLE, INC., COST AND SERVICE IMPACTS OF DEINSTITUTIONALIZATION OF STATUS OFFENDERS IN TEN STATES: RESPONSES TO ANGRY YOUTH 32 (1977).

In addition, many innovative programs can be developed that do not require expenditures of large amounts of money for facilities and staff. Existing organizations and groups often have resources, staff, and expertise that can be directed toward meeting the needs of youth. Volunteer programs may also be instituted. *See* OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, FREE: YOUTH PROGRAMS THAT DON'T COST DOLLARS (1978); OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, VOLUNTEER SERVICES (1978).

have to lock status offenders up to treat them."[109]

Mediation-Arbitration

The process of third-party intervention, in the form of either mediation, arbitration, or reconciliation, increasingly has been preferred as an alternative to court litigation[110] in many dispute situations, ranging from labor-management conflicts[111] and Indian land rights conflicts,[112] to minor misdemeanors[113] and community disputes.[114] Recently, there also have been significant attempts at mediation within the juvenile milieu.[115]

Mediation is a process of intervention by a neutral third-party who, without the power to make binding decisions, attempts to facilitate discussion among parties to a dispute and assist them in reaching a mutual agreement. An extension of mediation, "mediation/arbitration," takes the third-party process one step further. The dispute resolution effort begins with mediation, but if the parties are unable to agree to a resolution of the problem, the third-party is empowered to render a binding decision to resolve the dispute.[116] In arbitration, the parties to the dispute, by agreement in advance, submit issues to an abritrator for resolution with the understanding that the arbitrator's decision will be final.

109. San Francisco Chronicle, Jan. 4, 1979, at 21, col. 4.

110. Similar processes for dispute resolution are used in other countries; for example, the social conciliation courts in Poland and the public complaint boards in Sweden. For discussions of the uses of mediation, arbitration, and conciliation, see Greenwald, *C.R.S.: Dispute Resolution Through Mediation*, 64 A.B.A.J. 1250 (1978); Spencer & Zammit, *Mediation-Arbitration: A Proposal For Private Resolution of Disputes Between Divorced or Separated Parents*, 1976 DUKE L.J. 911 (1976); Note, *Compulsory Judicial Arbitration in California: Reducing the Delay and Expense of Resolving Uncomplicated Civil Disputes*, 29 HASTINGS L.J. 475 (1978). *See also* DeCecco & Richards, *Civil War in the High Schools*, PSYCH. TODAY, November 1975, at 51 (proposing use of mediation to deal with high school conflicts).

111. *See generally* F. ELKOURI & E. ELKOURI, HOW ARBITRATION WORKS (3d ed. 1973).

112. *See generally* Ford Foundation, Mediating Social Conflict 11-13 (Apr. 14, 1978) (draft) [hereinafter cited as Ford Foundation].

113. *Id.* at 23. See note 122 *infra*.

114. Ford Foundation, *supra* note 112, at 6.

115. Mediation is used to resolve inmate grievances in the California Youth Authority. *See* Ford Foundation, *supra* note 112, at 19-22. Mediation is also used in Washington as the first phase of a crisis intervention program for status offenders. Telephone interview with Jeff Milligan, Oregon Council on Crime and Delinquency (Feb. 26, 1979).

116. However, in actual practice, mediators attempt to avoid the final step of arbitration. According to Manuel Orochena of the New York Institute for Mediation and Conflict Resolution, in the over 250 cases he has mediated, he has resorted to arbitration only five times. "I've always had the feeling that no agreement is going to work unless the parties agree to it. . . . If you impose a resolution, they'll act as if a judge were making a decision. They go out and commit the same offense." Ford Foundation, *supra* note 112, at 25.

In considering the former two alternatives, mediation and mediation/arbitration,[117] it seems clear that both of these third-party mechanisms also might be applied successfully to situations involving juvenile noncriminal misbehavior. The use of mediation would remove noncriminal juveniles from the jurisdiction of the juvenile courts and place the problems of youth and family with a nonjudicial body, where family-oriented problems properly belong. The mediation process, unlike the court process, would directly involve the juvenile and the family in both the actual questions to be addressed and the resolution of the problem. The parties, generally the child and the parents, would be encouraged to take responsibility for the problem, which hopefully would lead to a more genuine effort to resolve it.

The positive elements of mediation in a juvenile status offender setting are that it would require a confrontation of the parent and child, would allow for the participation of a neutral party, and would remove the dispute from the impersonal and often unsatisfactory proceedings of the juvenile courts. In contrast to the courts' often mechanical treatment of status offenders, mediation would enable the parties to explore alternative solutions to the problems of the child and family, and to design a solution suited to their specific needs. More importantly, the juvenile would be spared the attendant stigma and frustration of a court experience.[118] As a practical matter, the use of mediation as an alternative to juvenile court adjudication would reduce the court caseload, allowing the court more time to devote to criminal violators.[119] The mediation process also could serve as a catalyst toward the use of community services by the juvenile.

In Rochester, New York, the County Youth Bureau utilizes medition in its Juvenile Diversion Program,[120] an alternative to the Family Court. The Program serves youths who have been petitioned to appear in Family Court for such incidents as truancy, minor cases of malicious mischief, fighting, vagrancy, loitering, trespassing, and alcohol related violations. The goal of the program is to foster family participation in mediation to help children and their families find a consensual and practical resolution to their problems. The mediation process is designed to ensure that the family receives personal attention and help,

117. Hereinafter, mediation is used as an inclusive term, encompassing mediation and mediation/arbitration.

118. As noted in Ford Foundation, *supra* note 112, at 23: "If you get him [a juvenile] in a court . . . he's marked . . . forever and you've probably lost him to the whole system. If you can get him into a private mediation system you can maintain his status as a noncriminal." See notes 72-84 & accompanying text *supra* for a discussion of the stigma and frustration accompanying a court experience.

119. See note 85 & accompanying text *supra*.

120. *See* Rochester-Monroe County Youth Bureau, Project Concept (unpublished funding request of mediation agency on file with *The Hastings Law Journal*).

rather than to attach a stigma of delinquency to the youth as would a court appearance.

The mediation "hearing" consists of the youth, the parents, and a neutral party called a panelist.[121] Prior to the hearing, the youth and family meet with a counselor to prepare for the mediation procedure and to discuss specific problems and concerns. The counselor acts as a resource person for the panelist and participants during the hearing, assisting in referring the youth and family to appropriate agencies and advising them of the need for further counseling. The counselor also meets with the family three weeks after the hearing to assess the results of the agreement and monitor the implementation of the decision.[122]

The Rochester program and other court diversion programs are examples of how mediation can be used as an alternative to juvenile court in dealing with noncriminal youth. Utilizing mediation would require that the juvenile and the family identify problems and seek solutions that they implement. The ultimate responsibility in such cases would lie with the family unit to explore and find solutions for their own lives. In contrast to the coercive intervention of the court, which often polarizes parents and children and encourages parents to abdicate their function to the court, mediation would serve to develop controls and means within the family for the resolution of conflicts: "It is within the family that the child must learn to curb his desires and accept rules that define the time, place, and circumstances under which highly personal needs may be satisfied in socially acceptable ways."[123]

Authorized Court Intervention

Recognizing that status offenders are noncriminal youths who suffer from personal and family problems, treatment afforded such youths should be flexible and fashioned to meet the specific needs of these children and their families. Rather than punitive treatment, alternative

121. When a criminal offense is involved, the victim also may attend the mediation hearing.

122. *See* Rochester-Monroe County Youth Bureau, Project Concept (unpublished funding request of mediation agency on file with *The Hastings Law Journal*). Court diversion programs exist in other cities also, for example, in San Francisco, Cleveland, Philadelphia, Boston, Akron, and New York City. *See* Ford Foundation, *supra* note 112, at 24. These programs are not directed solely to the diversion of juvenile disputes. In San Francisco, minor criminal incidents and community disputes can be solved through the Community Board Program. *See generally* Los Angeles Times, Mar. 30, 1978, pt. 4, at 1, col. 1; Pamphlet, Community Board Program (on file with *The Hastings Law Journal*). Under the Community Board Program, five member panels, selected by the community, hear disputes, help clarify problems, and discuss ways to resolve the problem. The Program staff and community cooperate to see that resolutions are carried out. Pamphlet, Community Board Program (on file with *The Hastings Law Journal*).

123. TASK FORCE REPORT, *supra* note 2, at 45.

methods such as counseling, arbitration, and non-secure homes should be considered fully before traditional solutions are utilized.

Where a child is not amenable to alternative forms of treatment, the juvenile court, as a last resort, can reassert jurisdiction over the child by utilizing its dependency jurisdiction. For example, California Welfare and Institutions Code section 300 provides that the juvenile court has jurisdiction over any person under eighteen years of age "[w]ho is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control."[124]

Most juveniles who would have fallen within the status offense jurisdiction also would fall within the provisions of section 300, thus allowing the court to intervene as a last resort. While historically use of section 300 has been almost exclusively for pre-adolescent minors who are inadequately cared for or abused, such limited use is the result of established practice rather than statutory limitations.[125] Most status offenders could be processed under the court's dependency jurisdiction; no matter how a runaway, incorrigible, or unruly teenager is described, it could be said that their parents are either unwilling or unable to control them.[126]

Conclusion

Juvenile court jurisdiction over noncriminal youths has not succeeded in rehabilitating youths or bringing justice to children. Therefore, serious consideration must be given to the elimination of this jurisdiction, if the problems of youths are to be dealt with effectively.

The proposals set forth in this Note, community-based services and advisory arbitration, are possible alternatives to juvenile court jurisdiction. Perhaps these services, administered outside the formal juvenile justice system, will prove to be a step toward more effective rehabilitation of noncriminal youths.

124. CAL. WELF. & INST. CODE § 300(a) (West Supp. 1979).

125. ASSEMBLY REPORT, *supra* note 2, at 33.

126. This is not to mean that all status offense cases should be processed under the court's dependency jurisdiction, but only that they could be processed if necessary.